

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

MWK RECRUITING, INC.,

Plaintiff,

v.

EVAN P. JOWERS,

Defendant.

1:18-CV-444-RP

EVAN P. JOWERS,

Counterplaintiff,

v.

MWK RECRUITING, INC., ROBERT E.  
KINNEY, RECRUITING  
PARTNERS GP, INC.,  
KINNEY RECRUITING LLC,  
COUNSEL UNLIMITED LLC, and KINNEY  
RECRUITING LIMITED,

Counterdefendants.

**ORDER**

Before the Court is Defendant/Counterplaintiff Evan P. Jowers’s (“Jowers”) appeal of United States Magistrate Judge Andrew W. Austin’s Order, (Dkt. 236). (Appeal, Dkt. 239).<sup>1</sup> In his order, Judge Austin denied eight discovery motions filed by Jowers, and granted Plaintiff/Counterdefendant MWK Recruiting, Inc. (“MWK”) and Counterdefendants Robert E. Kinney (“Kinney”), Michelle W. Kinney, Recruiting Partners GP, Inc., Kinney Recruiting LLC, Counsel Unlimited LLC, and Kinney Recruiting Limited’s (collectively, the “MWK entities”) Motion

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<sup>1</sup> Jowers captions his filing as a “Objections to Magistrate’s Order.” (Dkt. 239, at 1). Because the Court is reviewing Judge Austin’s order, (Dkt. 236), the Court construes Jowers’s motion as an appeal of Judge Austin’s order.

to Quash Subpoenas and for Protective Order, (Dkt. 217), and Expedited Motion for Protective Order, (Dkt. 225). (Order, Dkt. 236, at 1). Jowers timely filed his appeal on December 31, 2020. (Appeal, Dkt. 236). Kinney and the MWK entities filed a response stating they have no objections to Judge Austin's Order.

A district judge may reconsider any pretrial matter determined by a magistrate judge where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A). District courts apply a "clearly erroneous" standard when reviewing a magistrate judge's ruling under the referral authority of that statute. *Castillo v. Frank*, 70 F.3d 382, 385 (5th Cir. 1995). The clearly erroneous or contrary to law standard of review is "highly deferential" and requires the court to affirm the decision of the magistrate judge unless, based on the entire evidence, the court reaches "a definite and firm conviction that a mistake has been committed." *Gomez v. Ford Motor Co.*, No. 5:15-CV-866-DAE, 2017 WL 5201797, at \*2 (W.D. Tex. Apr. 27, 2017) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)). The clearly erroneous standard "does not entitle the court to reverse or reconsider the order simply because it would or could decide the matter differently." *Id.* (citing *Guzman v. Hacienda Records & Recording Studio, Inc.*, 808 F.3d 1031, 1036 (5th Cir. 2015)).

Jowers argues that because his Motion for Sanctions Resulting from Recruiting Partners GP, Inc.'s [sic] Failure to Appear at its Deposition, (Dkt. 226), sought involuntary dismissal under Rule 41, the motion should have been considered a dispositive motion requiring a report and recommendation under Rule 1(f) of Appendix C of the Local Rules. The Court will consider the motion as dispositive and will construe the portion of Judge Austin's order regarding that motion as a report and recommendation. A party may serve and file specific, written objections to a magistrate judge's findings and recommendations within fourteen days after being served with a copy of the report and recommendation and, in doing so, secure de novo review by the district court. 28 U.S.C.

§ 636(b)(1)(C). Because Jowers timely objected to the portion of Judge Austin's order relating to Jowers's motion for sanctions, (Dkt. 226, at 11–12), the Court reviews that portion of the order de novo. Having done so, the Court overrules Jowers's objections and adopts that portion of Judge Austin's order, construed as a report and recommendation, as its own order.

The Court reviews the other portions of Judge Austin's order that Jowers appealed for clear error or for conclusions that are contrary to law. Having done so, the Court denies Jowers's appeal. Upon its own review, this Court finds that those portions of Judge Austin's order were not clearly erroneous or contrary to law.

Accordingly, the Court **AFFIRMS** Judge Austin's Order, (Dkt. 236), and **DENIES** Jowers's objections and appeal, (Dkt. 239).

**SIGNED** on January 5, 2021.

A handwritten signature in blue ink, appearing to read "R. Pitman", with a horizontal line extending to the right.

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ROBERT PITMAN  
UNITED STATES DISTRICT JUDGE